

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CUSTOMS APPEAL NO.15 OF 2006

The Commissioner, JNCH, JNPT,
Nhava Sheva, Dist.Raigad.
v/s.

.. Appellant

Topaim Properties Pvt.Ltd.

.. Respondent

Mr.P.S.Jetley with Mr.Y.R.Mishra i/by Dr.T.C.Kaushik for the
appellant.

CORAM : R.M. LODHA &
J.P.DEVADHAR, JJ.

DATED : 22ND MARCH, 2006.

P.C.

Heard Mr.P.S.Jetley, the learned counsel for the appellant.

2. The Tribunal, on consideration of the available material,
recorded the finding thus-

“There is a practice claimed and not contested to charge for a block on basis of a weight which, is neither Gross Weight of the Block nor is it the Net Weight as contested by the Revenue. There is no correlation of any kind between chargeable weight of a Block and the actual weight of a block, which is mentioned gross weight on the importers invoice and weight ascertained by the Dock staff. In fact for BE 6/3774 the declared weight is 84.28 while ascertained weight is 83.15. While in other cases the ascertained is in excess of such declared weight. The explanation of charged weight as per commercial estimates of useful/usable slabs of marble that could be obtained will have to be accepted, since it appears to be an Industry/Trade Practice & not contested. The Marble Gross Weight

are approximate arrived weights and differences would be manifest due to reasons of change in scale etc. In that view of the matter, the importers declarations cannot be held to be a misdeclaration on the BE as regards weight. Since the chargeable weight in BE 613774 remains as 65.24MTs inspite of Ascertained weight to be less than Gross Weight as declared; no reason or/& relationship of a mathematical Formula to Gross weight and chargeable weight being established, the proposed to levy duty on values arrived by multiplying per MT the chargeable Rate price with Ascertained Weight cannot be upheld. If a Baker sells Hot Cross Buns at Rs.12 to a dozen, then for the thirteenth Bun put on the Basket as Bakers Dozen understood in that Trade cannot call for the Bakers Dozen to be valued at Rs.13, misdeclarations called for, as also to demand duty ad valorem prorata on thirteen Buns price at Rs.13. However, the situation would be different if the rate of duty is specific and per Bun, then duty will have to be calculated on 13 Buns multiplied by specific rate. Trade Practices are to be honoured if genuine and established charges of misdeclaration in section cannot be upheld. We find therefore no reason to uphold confiscation under section 111(i) &/or 111(m) of the Central Act, 1962 for the reasons of excess weight & to call for a penalty under section 112(a) on the importer or to charge duty on value as enhanced. Orders to that effect are set aside & appeal allowed."

3. It would be, thus, seen that the Tribunal accepted the trade practice which was claimed by the importer and not contested by the revenue and it was held that the declaration by the importer cannot be held to be misdeclaration.

4. We find no infirmity in consideration of the matter by the Tribunal. No substantial question of law arises. Appeal is dismissed in limine.

(R.M.LODHA, J.)

(J.P.DEVADHAR, J.)